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No. 85-1969

Supreme Court, U.S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

THE CITY OF OAKLAND, a charter city and municipal corporation,
Petitioner,

vs.

THE OAKLAND RAIDERS; ALLEN DAVIS; EDWARD W. MCGAH; LOUIS F. BARROERO; FRANK IVALDI; SHELDON MILENBACH; JOHN BROOKS; EUGENE BOSCACCI; JULIUS S. HARTMAN; GLADYS SARGENT; HENRY TRIONE; RALPH J. VAIL; W. H. WINKENBACH; E. J. MCGAH; DYNAMIC DEVELOPMENT CO.; OLIVER HOMES, INC.; ARNOLD BOSCACCI; ANDREWS CONSTRUCTION CO.; RALPH J. VAIL, Trustee; and LOS ANGELES MEMORIAL COLISEUM,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeal of California, First Appellate District

BRIEF OF RESPONDENTS LOS ANGELES RAIDERS (formerly called OAKLAND RAIDERS) AND ITS PARTNERS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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20 pp

QUESTIONS PRESENTED

1. California, through its courts, has held that the interest of the State of California in the taking by a city by eminent domain of a professional football club—a franchise in the National Football League—is too slight to outweigh the impact on interstate commerce and therefore that the State of California has not delegated to the city that sovereign power. Does this present a federal question at all, or, if it does, does it present one sufficient to warrant review or involve more than a question of fact under the "two court rule"?

2. Is there any reason why the power of eminent domain of a state agency is more immune from commerce clause analysis than the other two powers of state sovereignty, *viz.*, taxation and police power?

3. Can a subordinate state agency claim that conduct resting on exercise of coercive government power is merely a "market entrance" immune from the Supremacy Clause?

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BRIEF OF RESPONDENTS LOS ANGELES RAIDERS (formerly called OAKLAND RAIDERS) AND ITS PARTNERS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

This brief is filed for all respondents other than Los Angeles Memorial Coliseum Commission.[1]

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[1] Those respondents are the Los Angeles Raiders and its present or former partners, general and limited. Edward W. McGah is deceased. No one not named in the caption has an interest in the Los Angeles Raiders.

STATEMENT OF THE CASE

In February, 1980, the City of Oakland, California, the petitioner here, filed this novel and singular suit in a California court in Oakland itself. This was an attempt to seize by eminent domain the football club then known as "Oakland Raiders", a member of the National Football League ("NFL"). The club has been named "Los Angeles Raiders" since the decision of the United States District Court for the Central District of California in *Los Angeles Memorial Coliseum Commission v. National Football League, et al.*, affirmed in *Los Angeles Memorial Coliseum Commission v. National Football League, et al.*, 726 F.2d 1381 (9 Cir. 1984), *cert. denied, National Football League, et al. v. Oakland Raiders, et al.*, ____ U.S. ____, 83 L.Ed.2d 331, 105 S.Ct. 397 (1984).

Confronted in the Oakland court with an *ex parte* restraining order and an interlocutory injunction imprisoning it in Oakland by preventing it from moving operations to Los Angeles, the Raiders utilized California procedure to move the case to a "neutral" county.[2] There, in June, 1980, the court without a trial entered a summary judgment dismissing the case for lack of a "public use", a crucial element to a taking by eminent domain both under the Fourteenth Amendment of the United States Constitution and the Constitution of California.

On appeal by the City, the California Court of Appeal affirmed the judgment of dismissal in 1981. (*City of Oakland v. Oakland Raiders*, 123 C.A.3d 422, 176 Cal.Rptr. 646.) In the lower court the City Attorney had described the City's claim as an "ethereal claim".[3] The basis of the affirmance by the Court of Appeal was that California law did not authorize taking by eminent domain of intangibles not connected with real property and that what was sought to be taken was an intangible, the network of contractual relationships among members of the NFL constituting a football

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[2] The term, "neutral county" is the usual term; see, *e.g.*, *Westinghouse Electric Corp. v. Superior Court*, 17 C.3d 259, 264, 279, 131 Cal.Rptr. 231 (1976).

[3] Reporter's Transcript of March 20, 1980, p. 8.

franchise. The California Supreme Court, granting review, held that intangibles are subject to eminent domain under a revision of California statutory law in 1976. On every other issue in the case, the California Supreme Court merely held that the action should not have been disposed of by summary judgment, and that the City should be given an opportunity to support its claim by evidence at a trial. It reversed and remanded the case for trial and determination on all the " 'facts and circumstances' " (*City of Oakland v. Oakland Raiders*, 32 C.3d 60, 75, 76, 183 Cal.Rptr. 673 (1982)).

One of the defenses on which the case thereafter went to trial was that "[p]rofessional football as played in the National Football League is a business in interstate commerce. . . . " and that "acquisition by plaintiffs of the property sought to be condemned would be unconstitutional as violative of Article I, Sec. 8, Clause 3 of the Constitution of the United States".[4]

Obedient to the direction of the California Supreme Court that the case be determined on all the "facts and circumstances", the trial court received evidence on this and all other issues in a seven week trial in which 29 witnesses testified, more than 200 exhibits were received in addition to masses of material of which the court took judicial notice; the trial transcript occupies some 5,724 pages.

Once again, in August, 1983, the case ended in a judgment that the City take nothing and that the cause be dismissed. There then occurred what the court below has characterized in its opinion as "procedural maneuvers" by the City (Petition, App. 2a), including mandamus proceedings in California appellate courts. Eventually, on August 10, 1984, a final judgment was entered in the trial court denying the City the right to take, based on a "Statement of Decision" required by California Code of Civil Procedure § 632. The Statement of Decision assigned numerous reasons why the suit was dismissed, some constitutional, some statutory or decisional, each reason independently sufficient in itself. The

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[4] 2 Clerk's Transcript, p. 35 at 45.

opinion of the court below mentions three of these reasons (at Pet. App. 2a), namely:

1. The City's purpose in seeking to take was not for a "public use".

2. The taking would violate the Commerce Clause of the United States Constitution. The trial court's decision on this read (Clerk's Transcript 307):

> "The court finds that the involuntary acquisition of the Raider's franchise by the City would unduly burden and obstruct interstate commerce in violation of the Commerce Clause of the U.S. Constitution. (*U.S. Constitution, Article 1, Sec. 8, Clause 3*)"

3. In *Los Angeles Memorial Coliseum Com'n, et al. v. National Football League, et al.*,726 F.2d 1381 (9 Cir. 1984), it was held that NFL and its members had engaged in a conspiracy, in violation of the Sherman Act, to keep the Raiders out of Los Angeles. This Court denied certiorari to that decision, *National Football League, et al. v. Oakland Raiders, et al.*, and *Oakland-Alameda County Coliseum, Inc. v. Oakland Raiders, et al.*, ____ U.S. ____, 83 L.Ed.2d 331, 105 S.Ct. 397 (1984). The trial court found in this case that the City of Oakland was a party to that conspiracy and that the present eminent domain suit was an act in furtherance of the conspiracy.

Other independent grounds of the judgment were (1) that the attempt of the City to take the property was arbitrary, capricious, and in bad faith, (2) that the adoption and contents of the City Council's resolution to take were influenced and affected by a gross abuse of discretion and were sham, (3) that there was lack of public interest or necessity for the taking as required by California law, (4) that the property was sought to be taken for transfer to private owners and that the California statute permits such a taking only in circumstances not present, (5) that the property sought to be condemned was not within the territorial limits of the City at the time suit was commenced, and (6) that the City commenced the action without complying with the procedures required by statute.

Once again the City appealed, arguing that some of the grounds of the decision were precluded and the others unsound. The Court of Appeal affirmed the judgment this time on the ground that the taking was "parochial meddling with the national economy" (Pet. App. 6a-7a) and held (Pet. App. 8a):

> "We conclude . . . that the burden that would be imposed on interstate commerce outweighs the local interest in exercising statutory eminent domain authority over the Raiders franchise."

The court therefore found it unnecessary to reach any of the other reasons for dismissal of the suit.

At this juncture the case had been pending for 6 years, had been up and down in the hierarchy of the state court system several times, had been the subject of action in four Courts of Appeal and in the State Supreme Court, had occupied the attention of about 33 judges and justices, had been the subject of about 30 substantive orders, writs, opinions, and decisions in appellate courts, and for years had held in suspense the daily lives of a large number of human beings, the personnel of the Raiders club and organization, who did not know where their homes were to be.

Nevertheless, the City petitioned the California Supreme Court for review, and that court denied the petition on February 27, 1986. The present petition for writ of certiorari followed.

The petition pertains only to the commerce issue.[5] Denial of the petition will end this bedraggled litigation, but the utmost that petitioner could hope for from this Court would leave the case to wend its way, wearily, through the California appellate system for

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[5] There are unwarranted statements of fact in the petition but, as they are not relevant to the issues tendered to this Court, we do not dwell on them: *e.g.*, that the trial "court found that the economy of Oakland would suffer if the franchise were to be removed from the City" (Pet. p. 3). The trial court in fact found (3 Clerk's Transcript 1474): "There is not the slightest evidence that the City's economy or its development projects are endangered by the absence of the Raiders."

at least another year on the other issues, making this case bedfellow of *Jarndyce v. Jarndyce.*

Reasons for Denying the Writ

Contrary to the petitioner's assertion (Pet. p. 4), the decision below does not conflict at all or "in principle"[6] with any decision of this Court, of any court in any other state, or with the Ninth Circuit's decision in the antitrust suit, and it does not work any "extension" of any decision of this Court.

I

THE BASIS OF THE DECISION BELOW IS ESSENTIALLY BOTH FACTUAL ("TWO COURT RULE") AND A QUESTION OF CALIFORNIA LAW, THAT THE STATE OF CALIFORNIA HAS NOT DELEGATED TO THE CITY OF OAKLAND THE RIGHT TO EXERCISE CALIFORNIA'S POWER OF EMINENT DOMAIN FOR THE PURPOSE OF ACQUIRING A FOOTBALL CLUB, A PURPOSE SO MINOR IN COMPARISON WITH THE CONSEQUENT IMPACT ON COMMERCE

As the case comes before this Court it presents no question of general concern. Not the State of California but an inferior state agency sought to exercise eminent domain here. "Cities are not themselves sovereign; they do not receive all the federal deference of the States that create them", *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 412 (1978). In California the power of eminent domain belongs to the State and not to any subordinate political agency. A California municipality can exercise that power only to the extent that it is delegated to it and authorized by the State, and any claimed authorization is strictly construed against the public agency. "[A]ny fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the [municipal] corporation and the power is denied", *Harden v. Superior Court,* 44 C.2d 630, 641-642, 284 P.2d 9

[6] Notably, the petition does not claim any conflict; it cautiously interposes the elastic qualifier, "in principle".

(1955); *City & County of San Francisco v. Ross*, 44 C.2d 52, 55, 279 P.2d 529 (1955). Here, by the decision in this case and denial of review by the California Supreme Court, California has announced that California gives slight weight to the local interest of the City of Oakland and *has not delegated to Oakland any right to exercise* eminent domain in these circumstances. The essence of the petition for certiorari is that it asks this Court to reappraise the matter.

The late Julius Sackman, editor of the current edition of the preeminent treatise on eminent domain, *Nichols on Eminent Domain* (rev'd 3d ed. 1983), has referred to Oakland's interest in seeking to condemn the Raiders as *"petty"*. Sackman, "Public Use—Updated *(City of Oakland v. Oakland Raiders)"*, in *1983 Institute on Planning, Zoning, and Eminent Domain* (Southwestern Legal Foundation, Dallas), p. 203. While the California courts have not used Sackman's term, "petty", the State of California has held that the interests of the State in the proposed acquisition of the Raiders is slight and not sufficiently substantial to warrant its impact on interstate commerce. California courts are the final word on what is important, unimportant, or petty to California.

A state's power to affect interstate commerce "is never greater than in matters traditionally of local concern", *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 670 (1981). It hardly needed a decision to establish that taking a football club is not a matter "traditionally of local concern". In any event the decision below establishes that it is not. In *Partee v. San Diego Chargers Football Co.*, 34 C.3d 378, 194 Cal.Rptr. 367 (1983), it was held that professional football as played in the National Football League is so entirely, intrinsically, and inherently a matter of interstate commerce that not even the California antitrust law could play any part in its regulation. This Court denied certiorari, 466 U.S. 904 (1984).

Petitioner does not really deny that taking the Raiders would burden interstate commerce. The facts are summed up as succinctly as may be in the opinion below (Pet. App. 5a-8a), and it would be unnecessary replication to repeat here. The gist of petitioner's presentation to the California Supreme Court was

that, while there would be a burden on interstate commerce, it would not be "an *undue* burden". And that is the argument made in Part III of the petition (pp. 14-18). What is "undue" is essentially a factual question, because it depends on weighing and balancing a variety of considerations; the inquiry "necessarily involves a sensitive consideration of the weight and nature of the state regulatory concern in light of the extent of the burden imposed on the course of interstate commerce", *Raymond Motor Transportation, Inc. v. Rice,* 434 U.S. 429, 441 (1978); *Pike v. Bruce Church,* 397 U.S. 137 (1970). Here, upon consideration of all the facts, the trial court found, and the Court of Appeal and the California Supreme Court concurred, that, on weighing the State's interest against the impact on interstate commerce, the latter far outweighed the former. Under the "two-court rule" that conclusion, thus joined in by three state courts, would seem to be one this Court would not elect to review. *Rogers v. Lodge,* 458 U.S. 613, 623 (1982); *United States v. Ceccolini,* 435 U.S. 268, 273 (1978). The petition's assertion (p. 7) that the "rationale of the California Court of Appeal could be applied to" a variety of other situations misses the fact that the court's decision postulated no new law. It applied the established weighing and balancing process to a particular situation upon a particular and detailed factual record. Other situations, other facts, other records, will take care of themselves.

If the California courts had ruled the other way on the commerce issue, a radically different question would be presented to this Court in determining whether the Commerce Clause would be violated. The "two-court rule" has on occasion been relaxed to sustain constitutional protection where the lower court has failed to do so but it has never been relaxed to reverse a decision below that has sustained a constitutional protection. The concept of weighing and balancing conjures up the picture of the two pans of a balance scale; in one pan is the state interest, in the other the national. If the State considers the weight in its pan heavy, this Court nonetheless weighs the national pan and reviews the weight of the other. But if the State itself considers the weight in its pan slight, that should be the end of the weighing and balancing process; a subordinate state agency like a city should not gainsay the State's own conclusions or ask this Court to do so.

II
THE CITY'S OTHER ARGUMENTS UNDERSCORE THE LACK OF MERIT OF ITS POSITION

A. Petitioner's Claim that Exercise of Eminent Domain by a Subordinate State Agency Is Less Subject to the Commerce Clause than Other Governmental Powers Has No Substance

Petitioner's primary contention is not that its action does not unduly burden interstate commerce. Its first contention is that its conduct is shielded from analysis to determine whether it does unduly burden commerce!

In the court below petitioner cited *Hayfield Northern R. Co. v. Chicago & N.W. Tr. Co.*, 467 U.S. 622 (1984), for the contention that the exercise of eminent domain can never be precluded by the Commerce Clause. In a footnote the opinion below disposed of that contention (Pet. App. 5a): "Contrary to plaintiff's urgings, nothing in *Hayfield Northern R. v. Chicago & N.W. Transp.* (1984) ____ U.S. ____ [104 S.Ct. 2610], persuades us that the eminent domain action here is exempt from commerce clause analysis". Petitioner thereupon abandoned the argument when it sought review by the California Supreme Court. Now it resuscitates it in restricted form, urging that the power of eminent domain is not subject to the Commerce Clause absent a statute by Congress.

Neither common sense nor legal reason supports the contention. The Commerce "Clause has long been recognized as a self-executing limitation", *South-Central Timber Dev. v. Wunnicke*, 467 U.S. 82, 87 (1984). The power of government, *i.e.*, of sovereignty, is a single whole. For a state government it consists of three aspects, the power of taxation, the police power, and the power of eminent domain. No reason is assigned why one aspect of this governmental power is any more immune from the supremacy of the federal constitution than the others. Eminent domain is an " 'inherent' attribute of sovereignty" says the petitioner (Pet. p. 8), but it is no more so than the power to tax and the police power, which the petition concedes are subject to the self-executing limitation of the Commerce Clause (Pet. p. 12). Indeed, petitioner confesses that the power of eminent

domain, in the words of the opinion in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 240 (1984), is "coterminous" with the police power (Pet. p. 7).

Petitioner reverts to *Hayfield*, which is not remotely germane. There a federal statute regulated the process by which interstate rail carriers might abandon unprofitable lines, by entrusting the procedure to the Interstate Commerce Commission (ICC). The procedure was followed, the ICC authorized abandonment, the line was abandoned, and the question was whether the abandoned property could be subjected to eminent domain after the abandonment (467 U.S. 625-26, 632-33); the issue was sharply framed as being whether an abandoned line could "properly be viewed as *ordinary real property*" (p. 632, emphasis added).

Until the Supreme Court of California announced that under California law an intangible can be condemned, eminent domain suits by state agencies throughout the country were directed to specific pieces of real property and appurtenant easements, and it would be a rare case where the forcible taking of a piece of real property within a state could burden interstate commerce. Petitioner cites three cases to the subject (at p. 17). *Elberton Southern Ry. Co. v. State Highway Dept.*, 211 Ga. 838, 89 S.E.2d 645 (1955), was a suit by the State (not a subordinate agency) to condemn a 3 mile long slice of a railroad right-of-way in Georgia. So far from even intimating that state eminent domain was not subject to the Commerce Clause, the court recognized that it was, but found no undue burden on interstate commerce as the strip was replaceable by a different right-of-way. *Chicago, R.I.& G. Ry. Co. v. Tarrant County W.C. & I. Dist.*, (Tex.Civ.App.) 76 S.W.2d 147 (1934), concerned the taking of 4 miles of right-of-way in Texas, a gap readily filled by a new link; the issue of interstate commerce was not involved; the only issue was extent of compensation. In *Western Union Telegraph Co. v. Louisville & N.R. Co.*, 270 Ill. 399, 110 N.E. 583 (1915), what was sought to be condemned was an easement to put up telegraph poles on a railroad right-of-way in a manner not incommoding the public use of the railroad. The issue raised was whether a state court had jurisdiction of the suit or whether jurisdiction lay in a federal court. No claim of any burden on interstate commerce was made.

The present case is as different from any of those cited by petitioner as the imagination that created this lawsuit differs from the bar's prior understanding of eminent domain. As found below, a franchise in the National Football League (NFL) is participation in a network or web of contractual relationships for operating interstate businesses. As a break in any strand of a web shakes the whole, intrusion by *coercive force* on any franchise is a disruption of the living tissue of the interstate operations.

Although the petition at page 3 calls the present case and *Los Angeles Memorial Coliseum Com'n v. National Football League, et al., supra,* 726 F.2d 1381 (9 Cir. 1984), "unrelated", on pp. 5, 6, and 15 it inconsistently calls the two "inconsistent". They are both highly related and completely consistent. Petitioner's argument is so murky as to be unintelligible.[7] The decision in the federal case was that the League and its member clubs conspired in violation of the Sherman Act to keep the Raiders imprisoned in Oakland. The decision below is that the City may not accomplish the same imprisonment by eminent domain. The two decisions mesh hand in glove, for the trial court in this case found that the City of Oakland was a party to the Sherman Act conspiracy adjudicated in the federal case and used the eminent domain action as an act in furtherance of that conspiracy. Petitioner's argument comes to this: Having been foiled by the Sherman Act

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[7] One assertion of inconsistency is intelligible but false, *viz.*, that the Ninth Circuit held that NFL and its 28 member clubs were not a "single entity"—which is true—but that the "California court found that the NFL essentially is a single entity or 'joint venture' " (Pet. p. 6). The trial court did refer to "joint venture", but "joint venture" is not the same as "single entity". As noted in *NCAA v. Board of Regents of Univ. of Okla.*, 468 U.S. 85, 82 L.Ed.2d 70, 91 (1984), "joint ventures have no immunity from the antitrust laws", whereas, as held eight days earlier in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), "single entity" does. Petitioner has failed to read what the Ninth Circuit clearly wrote. It asserts (on p. 15) that the Ninth Circuit "held that the federal antitrust laws . . . precluded NFL regulation of franchise location". On the contrary, the Ninth Circuit held that under the Rule of Reason there was room for "more closely tailored" regulation than the unreasonable rule and conduct involved in the case (726 F.2d at 1397).

from directly imprisoning Raiders in Oakland, NFL can achieve the same result by not objecting to the eminent domain suit, thereby holding the Commerce Clause at bay.

B. The "Market Participant" Argument

"Coercive force" is the answer to the City's next contention that the Commerce Clause does not apply to action of a state or local governmental entity " 'enter[ing] the market as a participant' " (Pet. pp. 11-14). The Commerce Clause applies whenever a state or agency exercises a *governmental* power, coercive force. This is not a case of the petitioner's seeking to go into the football business by buying a football franchise from someone willing and able to sell. Petitioner sought to obtain the franchise only by the exercise of a power—eminent domain—so supremely that of a sovereign that California's highest courts have called it " 'one of the attributes of sovereignty most fraught with the possibility of abuse and injustice' ", *City of Los Angeles v. Koyer*, 48 Cal.App. 720, 725, 192 Pac. 301 (1920); "one of the most delicate exercises of governmental authority.... to be watched and guarded with jealous scrutiny", *Bensley v. The Mountain Lake Water Company*, 13 Cal. 306, 315 (1859). In the words of the court below, "Here the city does not even cross the threshold of the marketplace except by first exercising what has been characterized as a sovereign's 'most awesome grant of power' — eminent domain. (*Winger v. Aires* (1952) 371 Pa. 242, 244 [89 A.2d 521, 522].)"

The City's citations show how mindless its argument is. In *White v. Mass. Council of Constr. Employers*, 460 U.S. 204 (1983), Boston was not acting in a governmental capacity; it was not exercising the power of a sovereign to regulate or to compel anyone to do what it did not wish to do. It merely chose to entrust work projects financed by the City to contractors who hired certain percentages of local residents; it selected those with whom it chose to deal. In *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976), the State of Maryland was not exercising a governmental power to regulate conduct by command. It was *giving* away money by offering a bounty to wreckers who scrapped old automobile hulks in Maryland. The Commerce Clause did not prevent it from choosing to limit its gift to those who acted in the

State. The decision is so explained in *Reeves, Inc. v. Stake*, 447 U.S. 429 (1980), as dealing with the state's "proprietary activity" (*Id.* at 434, emphasis added), whereas the Commerce Clause is aimed at " 'actions taken by states in their sovereign capacity' " (*Id.* at 437). In *Reeves*, South Dakota had long operated a plant to make cement, not a governmental activity but a commercial activity competing in the private market. It chose to sell the cement which it manufactured to its citizens only, and it was this that was held not to come within the Commerce Clause. Petitioner overlooks the reason of things; expressions by this Court about "market entrance" were not designed to say something esoteric but to distinguish non-coercive action by a state from coercive, *i.e.*, governmental action. *South-Central Timber Dev. v. Wunnicke*, 467 U.S. 82 (1984), puts all this in its place. There Alaska's restriction on sale of state owned timber that it had to be processed in the state was held to violate the self-executing limitations of the Commerce Clause because, while sale of state timber might be a market transaction, restriction on its use was exercise of governmental power. *A fortiori*, if operating a football team, once acquired, might be a market operation, it could not have been acquired without first exercising the government's coercive power.[8]

Moreover, the City of Oakland's purpose in seeking to seize the Raiders was not to become a market participant. It sought to use the power of eminent domain to prevent the Raiders from moving from Oakland, a kind of regulation that the City lacked power to effect directly. As the trial court held, "the court finds that the eminent domain process was not instituted by the City in order to

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[8] In fact, petitioner could never operate the team. NFL's general counsel testified that in order to play games in the NFL, it would be necessary for the City to be a member (Reporter's Transcript 4953), but the City could never be a member because NFL's Constitution and Bylaws provide that only an entity organized for the purpose of operating a professional football club is eligible for membership and that an entity not operated for profit is not eligible (P.Ex. 104). The trial court found (Clerk's Transcript 295): "The evidence thus discloses not the slightest possibility that Oakland would be permitted the ownership or control of a league franchise."

acquire The Raiders, but to confine the club and influence it to negotiate a new licensing agreement with the Oakland-Alameda Coliseum Commission" (Clerk's Transcript 301). As disclosed in the opinion of the California Supreme Court in *City of Oakland v. Oakland Raiders, supra,* 32 C.3d at 73-74, the City told that court that it was not intending to acquire the Raiders in order to enter the football market by operating a football club but in order to transfer the club to someone who would bind itself to keep the club in Oakland. That is regulation, not "market participation". It is *South-Central Timber Dev., v. Wunnicke, supra.* And the petition repeatedly tells this Court that petitioner's purpose was to protect the City's "economy", to satisfy the "need" of the public for recreation, and the like (*e.g.,* Pet. p. 3).[9]

Conclusion

In this case the supremacy of state law relative to matters of state concern and the supremacy of the national constitution relative to matters of national concern unite to deny petitioner's suit.

From the outset, this suit and NFL's resistance to the Raiders' antitrust suit based on NFL's barring the Raiders from Los Angeles have washed each other's hands. The City and NFL have acted in concert to the end and purpose of keeping the Raiders imprisoned in Oakland. Through its agent, Oakland-Alameda County Coliseum, Inc., the City intervened in the antitrust suit on the side of NFL, and it furnished to NFL witnesses whom the City also called in its own case. (See, *e.g.,* the Petition for Certiorari to this Court in *Oakland-Alameda County Coliseum, Inc. v. Oakland Raiders, et al.,* ____ U.S. ____, 83 L.Ed.2d 331, 105 S.Ct. 397 (1984).) In turn, NFL furnished evidence to the City in this case, both by affidavit (see, *e.g., City of Oakland v.*

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[9] These were the City's avowed purposes, but they would not be the result of the taking. For example, the trial court found: "In terms of recreation, the evidence fails to support City's contention that the Raiders are necessary, in eminent domain law, to facilitate enjoyment of professional sports or even professional football" (3 Clerk's Transcript 1475).

Oakland Raiders, supra, 32 C.3d at 73) and by the live testimony of its general counsel. Throughout, the City and NFL have collaborated and consulted.

This Court denied the petitions for certiorari filed by NFL and Oakland-Alameda County Coliseum in the antitrust case (see p. 2, *supra*). We respectfully submit that it should deny the City's petition here.

Dated: San Francisco, California, June 3, 1986.

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